

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.Rev.Pet.No. 1218 of 2005()

CRA.647/2003 of ADDL.SESIONS COURT, (ADHOC), ERNAKULAM
CC.1894/1998 of JUDL.MAGISTRATE OF FIRST CLASS-II, ALUVA
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REVN. PETITIONER:

RAJENDRA PRASAD, 45 YEARS,
C.NO. 3182, CENTRAL JAIL,
VIYYOOR.

BY ADV. SRI.K.K.RAJEEV

RESPONDENTS:

STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD
ON 04/10/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

V. RAMKUMAR, J.
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Crl.R.P. No. 1218 of 2005
* * * * *
Dated: 04-10-2007

ORDER

The revision petitioner who was the accused in C.C. 1894 of 1998 on the file of the J.F.C.M-II, Aluva challenges the conviction entered and the sentence passed concurrently against him by the courts below for offences punishable under Sections 454, 461 and 380 I.P.C.

2. The case of the prosecution can be summarised as follows:-

On 27-1-1997 at about 10.30 a.m. the accused committed house breaking into house bearing door No. CC48/1742 belonging to P.W.1 and committed theft of gold ornaments worth Rs. 1,17,000/- and currency notes worth Rs. 500/-.

3. On the side of the prosecution 9 witnesses were examined as P.W.s 1 to 9 and 6 documents were marked as Ext.P1 to P6 and 27 material objects were marked as MOs 1 to 27.

4. The accused denied the incriminating circumstances appearing against him in the evidence for the prosecution when put to him by the trial Court. He did not adduce any defence evidence when called upon to do so.

5. The learned Magistrate , after trial, as per judgment dated 15-3-2003 found the revision petitioner guilty of the offences and sentenced him to rigorous imprisonment for three years each under Sections 454 and 380 I.P.C. and rigorous

imprisonment for two years under Sec. 461 I.P.C. The sentences were directed to be run concurrently. Even though the revision petitioner preferred an appeal before the Addl. Sessions Court (Adhoc-I), Ernakulam as Criminal (Jail) Appeal 647/2003 the said appeal was dismissed confirming the conviction for offences punishable under Sections 454 and 461 I.P.C. As for the sentence imposed by the trial court under Sec. 380 I.P.C. the lower appellate court reduced the the sentence to two years instead of three years. Hence, this revision.

6. The learned counsel appearing for the revision petitioner made the following submissions in support of the revision:-

The accused was arrested on 29-7-1998 in connection with another crime and the present case was foisted on him. P.W.3 who was the jewellery owner only says that he produced before the police the ornaments of the same fashion. P.W.7 who is a witness to the recovery turned hostile to the prosecution. There is no material connecting the accused with the offences as alleged. The sentence imposed on the revision petitioner is also excessive.

7. I am afraid that I cannot agree with the abvoe submissions. The evidence adduced by the prosecution clearly shows that at about 10.30 a.m. on 27-11-1997 the house of P.W.1 at Elamakkara was broke open and gold ornaments worth more than a lakh and currency notes were found missing. P.W.1 lodged a complaint before the police. For nearly 1 ½ years there was no clue forthcoming regarding the house trespass

and theft as above. On 29-7-1998 P.W.6 who was the investigating officer stumbled upon the accused and arrested him in connection with another crime. The accused gave Exts. P2(a) and P3(a) confession statement on the basis of which MOs 1 to 27 were recovered from two different shops as evidenced by Exts.P2 and P3 recovery mahazers. P.W.1 has identified those ornaments as the very same ornaments which were stolen from his house.

8. No doubt, P.w.7 who was an attester to Ext.P3 recovery mahazar turned hostile to the prosecution. But courts are familiar with such witnesses and the disloyalty shown by such mahazar witnesses need not deter the court from believing the testimony of the investigating officer if the same is trustworthy. The trial Magistrate who had the unique advantage of seeing the witnesses and assessing their credibility has chosen to believe the prosecution witnesses to enter the conviction recorded against the petitioner. The lower appellate court has also confirmed the said conviction. In the absence of any infirmity in the appreciation of evidence by the courts below, this court sitting in revision will be loathe to interfere with the conviction recorded by the courts below. The conviction is accordingly confirmed.

10. What now survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. It is true that he is aged 59 years and the imprisonment altogether awarded to him in the various cases in which he has been convicted will take him up to 2016. But that is not a criteria in

showing benevolence in the punishment. As rightly argued by the learned Public Prosecution, the petitioner is a habitual offender and there cannot be any unregulated mercy or leniency shown by the courts trying such offenders. Considering the imprisonment of two years granted to each of the offences and also considering the direction by the courts below that the sentence shall run concurrently, I see little scope of interference with the sentence imposed on the revision petitioner as well.

In the result, this revision is dismissed confirming the conviction entered and the sentence passed against him.

V. Ramkumar, Judge.

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